Raised Bill 6806
Public Hearing: 3-24-11

TO: **MEMBERS OF JUDICIARY COMMITTEE**
FROM: **CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)**
DATE: **MARCH 21, 2011**

RE: **CTLA's POSITION IN OPPOSITION TO RB 6806 REVISED UNIFORM ARBITRATION ACT**

In 2005, Jamie Leigh Jones, a civilian employee for Haliburton in Iraq, was drugged and gang-raped by several of her co-workers. When she reported it to her employers, she was isolated in a holding cell for several weeks. When she persisted in asserting her rights, she was discharged. When she sought to bring sexual harassment claims and sexual assault claims against her-co-workers and former employer, Haliburton denied her the right to a public jury trial by forcing her to bring her claim in front of a private arbitrator, choose the arbitrator from a panel of arbitrators who routinely are used by Haliburton and whose fees are paid by Haliburton. Congress was so outraged by this that in 2009 it passed the Franken Amendment which prohibited defense contractors from forcing their employees to sign mandatory arbitration agreements for sexual harassment claims.

The Connecticut Trial Lawyers is an organization that represents individual consumers, employees and injured persons. We oppose adoption of the Revised Uniform Arbitration Act to the extent that it enforces pre-dispute mandatory arbitration agreements involving consumers and employees, who are unknowingly forced to waive their statutory and civil rights.

Although arbitration can be an effective and cost-saving tool for dispute resolution, an agreement to arbitrate must be voluntary. The rights being waived, such as the constitutional

right to a jury trial, judicial determination of choice of law and venue, judicial due process, court-enforced discovery, damages, and appellate review should only be done knowingly and with a full understanding of the ramifications.

Pre-dispute arbitration agreements, such as those imposed by large employers on their non-union employees are contracts of adhesion. There is no level playing field between the parties entering into these contracts. There is no negotiation of the terms involved or discussion of the rights being waived. A non-union employee who refuses to accept a mandatory arbitration provision risks losing his job. These individuals have no bargaining power with respect to these agreements. Here are some of the basic concerns about the imposition of pre-dispute mandatory arbitration agreements on unsophisticated individuals who have no bargaining power:

(1) The RUAA permits companies to require their employees to waive certain types of statutory damages

There RUAA permits companies to limit the types of damages that can be recovered, even though federal or state statutes provide for them. A new employees will be unaware of the types of damages, such as punitive damages or emotional distress damages that they can recover if their employer violates their civil rights when they initially sign the agreement. Nevertheless, the RUAA permits employers to ask their employees to waive these types of damages.

(2) The RUAA Outsources the Civil Justice System

- Mandatory Arbitration has the potential of denying injured parties the legal resources and flexibility provided by our justice system by circumventing the right of a trial by jury and having an unbiased judge referee proceedings to ensure that individual civil rights do not get short changed.
- Mandatory arbitration replaces a fair and open court hearing with a closed-door procedure that is usually presided over by one individual whose decisions have little or no immediate public scrutiny.
- Certain civil rights statutes permit a judge to issue injunctive relief against a corporate wrongdoer to prevent similar future conduct; arbitrators lack the authority to force corporate wrongdoers to change their discriminatory or harmful behavior and thus, don't foster a "deterrent message" to the corporations.

(3) The RUAA Fosters Secrecy & Confidentiality

·Arbitrators often don't write out and justify the reasoning behind their decisions and because the process is often confidential, public discussion is dissuaded.
·Arbitration also fosters secrecy by ensuring that incriminating documents are never made publicly available.
·Section 12 (d), for example, prohibits a party from calling an arbitrator to testify or forcing an arbitration to produce documents in an proceeding, such as an application to vacate an award.

(4) Arbitrators can be biased and beholden to parties who pay their salaries

·Arbitrators are in the business of staying in business. In the event they make a series of decisions that do not satisfy the bill payer, usually a large corporation, they will find themselves eventually unemployed. Therefore, their decisions run the risk of being highly biased.

(5) Arbitration is NOT subject to the rule of case law that has evolved in Connecticut

·Case law has created a set of binding precedent upon which future parties can rely on to determine how a set of facts will be treated under the law.
·Unlike judges, arbitrators are not compelled to evaluate cases based on "legal precedent." Their decisions are usually made based on the immediate information placed before them during arbitration.

(6) Grants Immunity to Arbitrators

·Immunity is granted to judges since they are either elected directly by the people or appointed by elected officials. In either case they are subject to public scrutiny both prior and after assuming their position on the bench.
·In addition, they are subject to both a legal and ethical code of conduct for which they have to strictly follow. Violation of either can result in them be disbarred and removed from the bench.
·In addition, there is no reasonable opportunity for citizens to determine whether or not arbitrators are presiding over a case in which they have a conflict of interest. Open access and/or public resources do not exist to police such matters.
·Furthermore, section 14 ©, even provides that an arbitrator's failure to disclose a financial or personal interest in the outcome of the arbitration proceeding would not cause the arbitrator to lose this immunity. Since arbitrators cannot be forced

to produced documentation related to their proceedings, there cannot be any airing of documented evidence that has the potential of incriminating them or holding them accountable for wrongdoing.

The CTLA opposes the Uniform Arbitration Fairness Act to the extent that it ratifies the imposition of pre-dispute mandatory arbitration clauses upon consumers and non-union employees.